

CHAPTER 23-07.1 TUBERCULOSIS TREATMENT

23-07.1-01. Declaration of legislative intent. It is hereby declared that it is the intent of the legislative assembly, as follows: It is the policy of the state of North Dakota to treat persons having tuberculosis as dangerous to the health and welfare of the citizens of the state. It is also the policy of the state to declare that all cases of tuberculosis should be treated in an appropriate facility in order to complete the course of therapy for tuberculosis to lower the risk of relapse. To this end, it is declared that isolation provisions to achieve treatment of such persons should be accomplished to the fullest extent regardless of such person's ability to pay. It is further declared that such persons with tuberculosis must be given full opportunity to enter treatment voluntarily and to seek treatment from physicians and hospitals of their own choice at their own expense. In order to effectively prevent the spread of this disease it is necessary that the state:

1. Further the discovery, care, supervision, and treatment of persons having tuberculosis.
2. Encourage the use of all available public and private facilities to that end.
3. Regard this tuberculosis program as one of public health and one to be dealt with according to public health requirements rather than those of indigency.

23-07.1-01.1. Definitions. As used in this chapter:

1. "Appropriate facility" includes a licensed hospital, a public or private outpatient clinic, a long-term care facility, a correctional facility, or a person's home, and may also include directly observed therapy under the supervision of the department.
2. "Department" means the state department of health, including local public health boards.
3. "Medically approved course of treatment" means a treatment regimen or therapy prescribed by a licensed physician.
4. "Tuberculosis" includes those cases in which a person is found to have tuberculosis based upon laboratory testing, clinical evidence, or as diagnosed by a physician, the department, or a local health officer.

23-07.1-02. Care and treatment of tuberculosis patients or suspects provided without charge by state. Care and treatment provided by the state of North Dakota for persons suffering from tuberculosis, including diagnosis, tests, studies, and analyses for the discovery of tuberculosis, must be available without cost or charge to anyone who is suffering from tuberculosis or is suspected of having tuberculosis. Any such person who volunteers to assume and pay for the cost of such care and treatment or for the cost of such diagnosis, test, studies, or analyses must be permitted to do so; but no state, county, or other public official may request or require such payment or make or cause to be made any inquiry or investigation for the purpose of determining the ability of such person or of the person's legally responsible relatives to pay therefor. This section in no way bars freedom of the individual to seek treatment from a physician or in an institution of the individual's choice at the individual's own expense.

23-07.1-03. State has prior claim on patient benefits. Notwithstanding any provision in this chapter, this state has prior claim on benefits for the care and treatment of tuberculosis, including diagnosis, tests, studies, and analyses, accruing to patients for whom care and treatment is provided by the state of North Dakota under entitlement by the federal government, medical or hospital insurance contracts, workforce safety and insurance, or the medical care and disability provisions of programs under the supervision of the department of human services.

23-07.1-04. State health officer - Designee - Responsibility. The state health officer or designee is responsible for the inpatient and outpatient care of persons afflicted or suspected of being afflicted with tuberculosis. If the state health officer determines that suspected or actual tuberculous patients may be adequately cared for on an inpatient basis by contract with general hospitals or other appropriate facilities, authority for contracting with such facilities is granted to the state health officer. In addition, the state health officer is authorized to establish and maintain the necessary outpatient clinics for diagnostic workup and evaluation on all suspected or actual tuberculous patients in the state. The state health officer shall pay the contract fee to general hospitals or other appropriate facilities and provide funds to the outpatient evaluation clinics from funds to be appropriated for this purpose by the legislative assembly. The state's claim on patient benefits as provided in section 23-07.1-03 applies insofar as applicable to tuberculous patients in general hospitals and for services rendered in outpatient clinics. The state health officer or a designee has the power to:

1. Do any act necessary and proper in the performance of the functions imposed upon the state health officer by the provisions of this chapter.
2. Issue orders and compel obedience thereto.
3. Administer oaths.

23-07.1-05. Reports - Orders for the custody of persons. Upon a report to or receipt of information by the state health officer or any physician in the state that any person is reasonably suspected to have or to have been exposed to tuberculosis, a report must be made to the state health officer. Upon the receipt of the report, the state health officer shall investigate the matter and if the state health officer is convinced that the person may have, or may have been exposed to, tuberculosis, the state health officer shall request the person to voluntarily seek appropriate care and treatment. If the person refuses to accept voluntary care and treatment, the state health officer may issue a temporary order for care and treatment as determined by the state health officer. If the state health officer's temporary order is ignored, the state health officer may issue an order directing the sheriff or any peace officer of the county where the person alleged to have tuberculosis resides to compel the attendance of the person and may provide for suitable housing and care of the person until a hearing is held pursuant to section 23-07.1-08.

Prior to issuing a final order, the state health officer or a designee shall hear all relevant testimony for or against the final order. The examination and hearing on the order must be in the presence of the person alleged to have tuberculosis. The alleged tubercular person and any relative may resist the order and the parties may be represented by counsel.

23-07.1-06. Physician's examination - Findings - Final order. The state health officer may appoint a practicing physician to make a personal examination of a person alleged to have tuberculosis and to make such thorough investigation of that person's condition as will enable the state health officer to determine whether or not that person has tuberculosis. As soon as practical after the return of the physician's statement to the state health officer, the state health officer shall conclude the investigation and make a determination. If the state health officer finds that the alleged tubercular person does not have tuberculosis and is not dangerous to public health, the case shall be dismissed. If the state health officer finds that the person does have tuberculosis, the state health officer shall issue a final order that must:

1. State findings that the person does have tuberculosis;
2. State that the person is not undertaking a medically approved course of treatment for tuberculosis; and
3. Authorize an appropriate facility specified in the order to administer necessary and appropriate care, treatment, quarantine, or isolation until a hearing is held pursuant to section 23-07.1-08.

23-07.1-07. Sheriff's execution of state health officer's final order. The final order of the state health officer, in duplicate, together with the findings of the physician and the findings of the state health officer must be delivered to the sheriff who shall execute the same by conveying the person named therein to the facility specified in the order and delivering the person, together with the findings of the physician and the state health officer's findings and the duplicate of the order, to the person in charge of such facility or to the local health officer or a designee if the person is sent home. The sheriff must be allowed reasonable travel expenses, paid by the county, in the same manner and at the same rate as the expenses of other county officials are paid.

23-07.1-08. Hearing - Order. Unless waived by the alleged tubercular person, a hearing must be held by the district judge serving the county in which the person alleged to have tuberculosis resides within one hundred twenty hours, exclusive of weekends and holidays, after the date of the state health officer's final order. The court may consider all relevant evidence, including the results of a physical examination made pursuant to section 23-07.1-06, and the state health officer and the alleged tubercular person must be afforded an opportunity to testify, to present and cross-examine witnesses, and to be represented by counsel. Upon the request of the state health officer, the state's attorney of the county wherein the hearing is held shall represent the state health officer without additional compensation.

If, upon completion of the hearing, the court finds that the allegation that the person has tuberculosis, and the allegation that that person was not undertaking a medically approved course of treatment for tuberculosis prior to the state health officer's final order, have not been sustained by clear and convincing evidence, the court shall dismiss the case and order that the person alleged to have tuberculosis be discharged if in custody prior to the hearing. If the court finds that the allegations have been sustained by clear and convincing evidence, the court shall issue an order that must:

1. State its findings that the person does have tuberculosis;
2. State that the person has not undertaken a medically approved course of treatment for tuberculosis prior to the state health officer's order; and
3. Authorize the facility specified in the state health officer's final order to receive and keep the person in its facility for necessary and appropriate care, treatment, quarantine, or isolation for so long as the danger to public health exists.

23-07.1-09. Appeal to supreme court - Habeas corpus - Hearing. An appeal from an order of the judge of a district court authorizing a specified medical facility to receive a person for care, treatment, quarantine, and isolation may be taken to the supreme court. In such a proceeding, the state's attorney of the county wherein the appeal is taken, without additional compensation, shall represent the state health officer. The clerk of the district court of the county from which the appeal is taken shall notify the state's attorney of the filing of the appeal. The appeal must be limited to a review of the procedures, findings, and conclusions of the lower court. All persons placed in the custody of the state health officer under the provisions of this chapter for care, treatment, quarantine, and isolation are entitled to the benefit of the writ of habeas corpus and a determination as to whether a person in custody has tuberculosis must be made at the hearing. If the court decides that the person does have tuberculosis, the decision does not preclude a subsequent application for a writ or the issuing of a writ upon a subsequent application, if it is alleged that the person has been restored to health.

23-07.1-10. Discharge - Release. All orders of the state health officer or of a judge of a district court authorizing the reception and retention in custody for care, treatment, quarantine, or isolation of persons having tuberculosis endangering public health are effective only during the continuation of the condition and any person who has completed a medically approved course of treatment for tuberculosis must be discharged immediately from custody. The discharge must be made by the state health officer or a designee. The person in charge of a medical facility may also release any person admitted to the medical facility under the provisions of this chapter at

such times and under such conditions as deemed advisable after consultation with the state health officer or a designee.

23-07.1-11. Liability of officers. The order of the state health officer authorizing the admission of any person to the custody of a medical facility and the reception and detention of such person at such medical facility as a patient, accompanied by the state health officer's findings as provided in this chapter protects the state health officer or the state health officer's designee and the other personnel of the medical facility from all liability, civil or criminal, on account of the reception and detention of such person therein, if such detention is in accordance with the laws of the state of North Dakota.

23-07.1-12. Confinement exception - Quarantine. Any person who observes quarantine regulations as established by the state health officer and undertakes a medically approved course of treatment for tuberculosis may not be subject to confinement under the provisions of this chapter.

23-07.1-13. Indian jurisdiction. Nothing in this chapter requires the admission of an enrolled Indian, resident on any reservation in this state, to any off-reservation institution except upon written request and authorization of the superintendent of the reservation on which said Indian is enrolled. However, in the public interest and with the objective of eradication of tuberculosis in the state of North Dakota, an Indian with tuberculosis off any reservation is subject to this chapter. It is the responsibility of the Indian affairs commission pursuant to the commission's powers and duties, stated in section 54-36-03, to work closely with the tribal councils and other reservation officials to adopt any agreements found necessary in assisting the state health officer in carrying out responsibilities under this chapter so that all residents of this state will benefit, and eradication of tuberculosis in North Dakota can be achieved.

23-07.1-14. Care of tubercular patients - Acceptance of federal funds - General hospital. The state health officer, or a designee, is hereby authorized to contract with public or private agencies for the care of persons having tuberculosis. The state health officer is hereby authorized to accept any federal funds or to enter into any federal programs on behalf of persons having tuberculosis in North Dakota. The state health officer may also utilize general hospitals or other appropriate facilities in the placement of recalcitrant persons having tuberculosis.

23-07.1-15. Penalty.

1. A person is guilty of a class A misdemeanor if:
 - a. That person fails to undertake diagnostic examination for tuberculosis upon the request of the state health officer which is based upon the reasonable suspicion that that person has or has been exposed to tuberculosis;
 - b. That person has been diagnosed with tuberculosis and fails to undertake a medically approved course of treatment for tuberculosis; or
 - c. That person is the parent of a minor or guardian of a person who violates subdivision a or b.
2. Upon conviction, the court may order that person to obtain a supervised medically approved course of treatment for tuberculosis until the treatment is completed, in addition to other penalties or conditions provided by law.